✓ Reserve

App. F. IX-4

*Previous References*

193 3.
(Mysore)

File No. 218 – 33
Serial Nos. 1 to 2.

*Later References*
Law 112-35(4-5)
112-35(4-6)
M 36-38-1-2
Secy 301 Rec (1-2)

# General and Revenue Secretariat.

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*Serial Nos.* ?

**Part B for** March 34.

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SUBJECT.

Filing suit in the District Judges Court Shimoga to recover Rs 1361 due to Sri Chinnaswami Narasimha Swami temple ~~Shivamoggali Jaedeth~~

To see Mys Corr

Complete

No 1312-3 of 29 3-34

Approves of the proposal

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1054.

M C. 13]

No. 1226

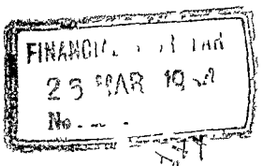
Since 2-3-34

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE.

Dated, Bangalore, 23rd March 1934.

Mys 218-33-1

FROM N. Madhava Rao Esq., B.A.,B.L.,
Muzrai Commissioner in Mysore




7- 26/3

To

S. Shamanna, Esq., B.A.,
Secretary to the Government of His Highness
the Maharaja of Mysore
Financial Department.

Head Steno

Mr AKR

SIR,

Subject.- Re: the filing an appeal in the District Judge's Court, Shimoga, against the Judgment of the Additional Munsiff, Shimoga, in O.S. No.113/27-28 relating to the recovery of Rs 1361/- due to Sri Chintamani Narasimha swami temple in Thirthahalli Taluk.

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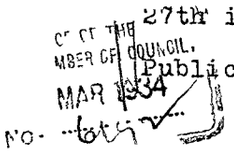
I have the honor to forward herewith copy of the Shimoga District Deputy Commissioner's letter No. Muz.2310/26-27 dtd together with the copy of the Public Prosecutor's letter, Judgment of the Lower Courts and other statements relating to the above case, and to state that the merits of the case and grounds of appeal have been explained in the Public Prosecutor's letter.

2. The Deputy Commissioner recommends sanction to the filing of the appeal in the interest of the institution and under the circumstances explained by the Public Prosecutor.

3. As the last date to file the appeal is the 27th inst., I have requested the Deputy Commissioner to instruct the Public Prosecutor to file the appeal in anticipation of sanction.




4. The action may kindly be approved.

I have the honor to be,
Sir,
Your most obedient servant,

Sent with a draft G.O. apptg.

For approval
26/3/34

For Muzrai Commissioner

| Serial No. | |
|---|---|
| 2 | 13:2-13 dated 29.3.1934 The M.C.A. Mysore re Comptroller Approval of the proposal in B 3/4 21 above |



WD 0431—GPB—15,000—12-10-33

File No.

General and Revenue Secretariat

Serial No.

Copy of letter No. Muz.2310/26-27 dated 13th March 1934 from the Deputy Commissioner, Shimoga District to the Muzrai Commissioner in Mysore, Bangalore.

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In forwarding herewith a copy of letter No.468 dated 10th March 1934 received from the Public Prosecutor, Shimoga Division, together with its enclosures in orginal, requesting sanction to prefer an appeal in the District Judge's Court, Shimoga Division, against the judgment of the Additional Munsiff of Shimoga dismissing as against the 1st Defendant in the case O. S. No.113/27-28 Deputy Commmissioner and Muzrai Officer, Shimoga District Vs. Sankaranarayana Bhatta and others filed for the recovery of Puduvat amount of Rs.136 and odd due to Sri Chintamani Narasimha devaru at Hurali, Thirthahall Taluk, I have the honor to state that the Public Prosecutor, Shimoga Division, is of opinion, for reasons explained in his letter, that the case is a fit one for being taken up in appeal before the District Judge's Court, Shimoga Division, and requests sanction to file the appeal.

Under the circumstances explained by the Public Prosecutor and in the interests of the temple, sanction may be accorded to prefer the appeal before the District Judge's Court.

The Public Prosecutor requests that a sum of Rs.200/- may be advanced to him towards the expenses of the suit. A sum of Rs.200/- may be advanced out of the funds at the credit of the Institution as requested by him.

As the last day for filing the appeal is 27th instant, I request the favor of very ealy orders in the matter.

The enclosures may be kindly caused to be returned when done with.

' Copy '

For Muzrai Commissioner.

Letter No.46[illegible] dated 10-3-34 from the Public Prosecutor, Shimoga Division, Shimoga to the Deputy Commissioner, Shimoga District.

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Subject: O.S.113/27-28 on the file of the Munsiff of Shimoga.

(Shimoga Dy.Commissioner Vs. Shankaranarayana Bhatta)

The above case is a suit for recovery of Rs 1361-7-7 being the principal and balance of interest due on a Promissory Note, executed by the deceased father of defendants 2,3, and 4, in favour of Sri Chintamani Narasimha Devaru of Hurli in Tirthahalli Taluk and 1st Defendant Kokkodu Shankaranrayana Bhatta has been impleaded as the money was originally given to him from out of the Kuduvat Fund of the institution. The suit was contested and the same has been disposed of by the Additional Munsiff of Shimoga on 25th January 34, by dismissing the suit as against the 1st defendant and decreeing the same as against the assets of deceased Negaravalli Appu Bhatta, in the hands of his sons, who are defendants, 2,3 and 4. Since an insolvency application has been filed against defendants 2,3, and 4 by their creditors, the decree obtained against their father's assets is infructuous in as much as there is no way to realise the decree amount from their family property. The only person from whom the money could be realised is the first defendant and as against him the suit has been dismissed. Thus, the Diety in question stands to lose a substantially heavy amount in case the matter is not taken up in appeal before the District Court.

2. The Chief issues framed in the case are (a) whether the 1st defendant was a trustee for the sum of Rs 1000/- belonging to Plaintiff's Temple? (b) whether the first defendant had any authority or right to lend the said sum of Rs 1000/- to Appu Bhatta and take a pronote from him? Whether this action of the first defendant is binding on the Plaintiff? (c) Whether the Musrai Department accepted the suit pronote in lieu of the first defendant's liability to repay the said sum of Rs 1000 to plaintiff? (d) is the suit not barred by limitation.

3. Now as regards the issue (a) the Court has held that the amount was not entrusted to the first defendant for any definite or specific purpose but that it was sent out to him for interest. But, the Court has not attached due weight to the circumstances under which the amount came to be paid to the first defendant, which make out the transaction to be an entrustment of temple funds with the first defendant. The Devotees of the Temple had raised about Rs 700/- and odd by means of subscriptions, for getting a car to the Diety and had deposited the same with Kasaravalli Sahukar Parameswara Bhatta, who was a trustee of that amount. But the said Gentleman was not willing to keep the money with him, but, first defendant expressed a desire to take over the money to himself and pay interest thereon. The villagers held consultation amongst them and agreed to the first defendants proposal. It was then, that Parameswara Bhatta added about Rs 200/- from out of his own funds and made out a round sum of Rs 1,000/- which was then sent to Hegaravalli Appu Bhatta for payment to the 1st defendant (vide the evidence Pws.1 and 3). So that the transaction is merely a substitution of 1st defendant's trustee-ship to that of Sahukar Parameswara Bhatta, who has been found to be a trustee by the Court and the 1st defendant has merely stepped into the Shoes of the said Sahukar. The mere agreement to pay interest does not convert the transaction into a loan and the additional Munsiff isnot justified in basing his conclusions on certain answers of pw3 in his cross-examination, while, he has entirely ignored the 1st defendants theory of a loan obtained from Appu Bhatta, which he has failed to prove.

(4) As regards issue (b) the learned Munsiff has decided the same infavour of the first defendant apparently on no legal grounds. He has ignored the fundamental rules framed under the old Muzrai Regulation under which Dharmadarsis like 1st defendant are not authorised to lend out monies out of Puduvat funds of a Muzrai Institution without the sanction of the Government and

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the action of the 1st defendant, who became Dharmadarsi in 1921 in lending out the Temple funds in his hands to Appu Bhatta and to get a pronote exhibit B though in the name of the diety (as clearly admitted by his son Sheshadriah DW1) in the year 1924 is clearly against rules and untenable. In these circumstances, it is difficult to conceive how the action of the 1st defendant can be held to be binding on the institution as decided by the Munsiff.

(5) Lastly as regards issue No.(c) the learned Munsiff has held that the Muzrai Department accepted the suit pronote exhibit B in lieu of 1st defendant's liability to repay the sum of Rs 1000/- to the plaintiff, merely, on consideration of Receipt Exhibit II given by the Amildar to 1st defendant in 1925 for having taken the suit pronote exhibit B into his custody and exhibits VIII and IX which are notices issued to Seshadriah. The learned Munsiff has come to the conclusion, he has arrived at, on the ground that Exhibit II proves that the Amildar was satisfied and he accepted the pronote of Appu Bhatta. But this is not a correct appreciation of the evidence on record. The Amildar, Mr. Venkatarangan who has been examined as PW2, has deposed to the circumstances under which he came to know of the suit transaction and 1st defendant's lending the amount to Appu Bhatta and hastestified that he took the suit pronote exhibit B with him and "lodged it in Tirthahalli taluk Treasury". It is significant to note that in the cross examination of this witness no question has been put to him to elicit the fact that he took the said pronote in substitution of 1st defendant's liability as is held by the Munsiff. The tenor ofAmildar's evidence is that he took the pronote more as a collateral security from him along with the 1st defendant's liability Appu Bhatta. In addition to this, when I cross examined the plaintiff, as to what he meant by saying 'ಒಂದಾಗಿರುವ' in his written statement, the words used for denoting the receipt of the pronote exhibit B by the Amildar, in token of substitution

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he has not explained as to what he meant by Kaal wood. This clearly indicate that the theory of substitution of 1st defendants liability of 1st defendant's liability from the receipt of Exhibit B is an after thought conceived by the ingenuity of the defendant's Counsel.

(6) The issue of limitation entirely rests on the question whether the suit transaction is a loan or a trust. If it is a loan manifestly the suit is out of time, but, if it is a trust there is no question of limitation at all, under Section 10 of the Limitation Regulation. As already observed above, the Munsiff has not correctly appreciated the evidence on record and has ignored the authority cited before him which held in analogous case that where temple funds which were in the hands of a Dharmadarsi have been alienated to others and lost to the institution, on account of his latches, can be recovered from him as money entrusted irrespective of time or limitation.

(7) I am therefore of opinion that this is a fit case to be taken up in appeal before the District Court and the last day for filing the said appeal is 27th instant. The total amount including the principal sued for in the lower court and the current interest thereon, at 6 per cent per annum, from the date of suit namely, 8-8-27, comes up to about Rs 2,000/-. Hence a court Fee of Rs 150/- is required to be paid on the appeal memo and the initial amount required to be advanced towards the expenses of the appeal is Rs 200/-.

(8) I, therefore, request you to kindly address the Muzrai Commissioner and obtain his sanction for preferring this appeal before the 27th instant and for advancing Rs 200/- towards its expenses. Copies of pleadings, judgment, decree and depositions are herewith sent for his perusal and return. The matter may kindly be treated as requiring immediate attention.

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"Copy"

A. Ramachandra

Deputy Commissioner,
Shimoga District.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

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Read:-

Letter No.1226 dated 23rd March 1934 from the Muzrai Commissioner in Mysore, requesting approval to his action in having requested the Deputy Commissioner, Shimoga in the circumstances explained, to instruct the Public Prosecutor, Shimoga to file an appeal in the District Judge's Court, Shimoga against the Judgment of the Additional Munsiff, Shimoga, in O.S.No.113/27-28 relating to the recovery of Rs.1351/- due to Sri Chintamani Narasimhaswami temple in Tairthahalli Taluk.

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Order No: 1312-13/ Mog 218-33-2

Dated, Bangalore, 29th March 1934.

Approved.

AG
RG

Financial Secretary to Government.
BR

To

The Muzrai Commissioner in Mysore.
The Deputy Commissioner, Shimoga.

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G.R.S. App. F VI—G 2]

SUBJECT .....

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*Diary No. of letter replied to* .....

Section Mcg
File No. 218-33
Serial No. 2

General and Revenue Secretariat

( )

*the* 193 .

*Proceedings of the Government of His Highness the Maharaja of Mysore.*

Date of issue 29/3/ 1934

Signed by Meeddekurlaya

*Read*—

Letter No 1226 dated 23.3.34 from the M.C in Shim. requesting approval to his action in ~~his~~ having the D.C Shimoga in the circumstances explained, to instruct the public prosecutor

Order thereon.—No. Shimoga to file an appeal against the Judgment of the Addl Munsiff Shimoga in O.S. No 113/27-28 relating to the recovery of Rs 1961 due to Sri Chintamani Narasimha Swamy temple in

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

Thirthahalli taluk.

order 1312-13 Income

Approved

Dr 25/3

26/3/34 Pl Secy to Govt

The H. Ein Ehyne

a D. e Shimoga

copy to Law Secy Govt Dept. a 29/3.

*List of Enclosure.*

*Copied by*

*Examined by*

WD 73—GBPM—20,000—10-8-31

1 of 2 pages